



2024:DHC:9288-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 29.11.2024***

+ W.P.(C) 11059/2024
EX CT HARDAYAL YADAVPetitioner
Through: Mr. Randhir Singh Kalkal,
Adv.

versus

UNION OF INDIA AND ORS.Respondents
Through: Mr. Kushagra Kumar, SPC with
Mr. Rudra Palliwal, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India by the petitioner seeking quashing of the letter dated 16.02.2019 issued by the Deputy Inspector General, SHQ, BSF, Baramulla. The petitioner, who was released from service on 18.06.1980 after serving for about 11 years in the Border Security Force ("BSF"), was informed *vide* the Impugned Letter dated 16.02.2019 that he was not found to be entitled for the grant of Disability Pension or Extraordinary Pension.

2. To the extent necessary, we shall narrate the facts by noting that the petitioner was enrolled in the BSF on 01.12.1969, and at the time of his recruitment in the service, he was found to be medically fit by the Recruit Medical Board. While being posted at STC Jalandhar, on



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04.12.1977, the petitioner developed sudden diminution of vision of both eyes and was resultantly admitted in the BSF, Base Hospital, Jalandhar, where he was treated for his ailment. On account of the diminution of vision in both his eyes, the petitioner was again admitted in the hospital on 09.12.1977 and remained there till 20.12.1977. At that time, he was diagnosed with “*Retinal Haemorrhage*” and was recommended 60 days of Earned Leave by the Doctor on medical ground. Further, on 02.08.1978, the petitioner was examined by an Eye Specialist at MH, Jalandhar Cantt. and was diagnosed with “*Vitreous Haemorrhage Right Eye with Caps Lenticular Opacity Left Eye*”. At that stage, his medical category was recommended as ‘CEE’ for a period of three months and it was directed that he be examined by the next quarterly Medical Board for categorisation. The Chief Medical Officer, Hissar, *vide* the letter dated 13.11.1978, advised that the petitioner consult a Specialist and referred him to the Medical College and Hospital, Rohtak for the subsequent treatment.

3. Thereupon, the petitioner was admitted in the said hospital on 14.11.1978 and was consequently discharged on 19.03.1979. He was advised to take rest for 20 days and to return for a medical check up on 06.04.1979. On 06.04.1979, when the petitioner visited the hospital for his check up, he was again admitted in the hospital and thereafter discharged on 11.04.1979, with medical advice to continue his treatment. The petitioner’s Unit granted 60 days of Medical Leave to him on 24.04.1979 and he was dropped at his home by the Unit personnel. *Vide* the letter dated 18.06.1979, the SMO, BSF Base



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Hospital, Jalandhar Cantt. had explained the medical condition of the petitioner to the Commandant, 40th Bn, BSF.

4. The Medical Officer, 52nd Bn, BSF prepared a report dated 22.09.1979 regarding the diagnosis of the disease of the petitioner and a second report dated 03.10.1979 was prepared by the Medical Officer, 60th Bn, BSF. On 09.10.1979, a Movement Order was issued to the petitioner for a check-up in the Medical Institute at Rohtak and Constable Basti Ram accompanied him as his sick attendant.

5. Ultimately, on 18.06.1980, the Release Medical Board (RMB) was conducted for the petitioner at the Base Hospital, Jalandhar, Punjab and his disability was assessed at 100% for life long. The RMB recommended that he be invalidated out of service in the medical category 'EEE'.

6. Consequently, on 19.06.1980, the petitioner was invalidated out from service with effect from 18.06.1980, due to his disability and he was granted Invalid Pension by the respondents *vide* PPO No. BSF-5425 dated 08.12.1980. However, he was not granted Extraordinary Pension, even though the disability of the petitioner was attributable to his service conditions and developed after being enrolled as a Constable with the BSF.

7. The petitioner in this regard issued a legal notice dated 12.10.2018, sent through his counsel, for availing Extraordinary Pension. As the same was not replied to by the respondents, he sent a reminder notice on 14.02.2019. Thereafter, on 16.02.2019, the respondents sent a reply, rejecting the claim of the petitioner for grant of Extraordinary Pension.



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8. Aggrieved by the same, the petitioner has challenged the said Impugned Letter dated 16.02.2019 before us. The petitioner prays for payment of disability pension, including service element of his pension for his 100% disability with effect from 19.06.1980 along with interest @ 10% per annum.

9. The learned counsel for the petitioner submits that he is entitled for Disability Pension under Rule 3A(1)(a) of the Central Civil Services (Extraordinary Pension) Rules CCS (EOP) Rules, 1939. He submits that the Ministry of Personnel, Public Grievances and Pensions Department of Pension and Pensioners' Welfare had issued a letter dated 03.02.2020, for special benefits in cases of death and disability in service and for payment of Disability Pension/Family Pension on the recommendations of the Fifth Central Pay Commission. He submits that the case of the petitioner is squarely covered under Category-B of the said letter dated 03.02.2020.

10. The learned counsel for the petitioner submits that the petitioner had served in the BSF for 10 years 06 months and 17 days, thereafter, he was invalidated out of service in a Low Medical Category, on the recommendation of the Medical Board, after assessing his disability at 100% for life. Thus, he is entitled to disability element of pension since the disease that he suffered from, was developed during his service and is attributable to, as well as aggravated by his service conditions.

11. The learned counsel for the respondents seeks dismissal of the writ petition and raises a preliminary objection with respect to the maintainability of the petition as being time barred as the petitioner



has approached this Court after being released from service more than 44 years ago. He submits that being an old case of invalidation of service, the medical record of the petitioner for the relevant period has been weeded out. He further submits that before considering the case of a Force personnel for the disability element of pension, the relevant medical record is required to assess whether the disability for which such an individual, who was boarded out of service, had a causal connection with his service, thereby being attributable to or aggravated by his service condition. He submits that in the absence of the medical record, this Court will not be able to consider the case of the petitioner for Disability Pension.

12. More so, he submits, since the claim of the petitioner was not covered under category-‘A’ of Schedule-II of CCS (EOP) Rules, the Disability Pension or Extraordinary Pension was not granted to him.

13. It is relevant to note that *vide* the Order dated 09.08.2024, this Court had directed the respondents to check on whether the medical record of the petitioner is still available as he was released from service more than 44 years ago. Pursuant to the said query, the respondents have submitted that the entire medical record of the petitioner, being an old case, was weeded out back in the year 1993.

14. Having considered the submissions of the learned counsels for the parties and perused the record, at the outset, the question before us that concerns determination is whether the claim of the petitioner suffers from delay and latches.

15. Normally, a belated service claim will be defeated on the ground of limitation. However, one of the exceptions to the general



Rule of Limitation, which are applied with an aim to secure greater public interest and are founded in public policy, relates to a “continuing” cause of action, which may give rise to a recurring cause of action in a service-related claim of an individual, but which are not affecting the rights of a third party. In this background, it would be apposite to refer to the decision of the Supreme Court in ***Union of India & Ors. v. Tarsem Singh***, (2008) 8 SCC 648, which reads as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen



years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

16. Notably, the petitioner has approached this Court after a long delay period of 44 years. Unfortunately, during this period, his medical record has been weeded out by the respondents. Therefore, in view of the non-availability of the medical record, the decision in the case of **Tarsem Singh (supra)** will not come to the aid of the petitioner as the petitioner has failed to establish that the disability suffered by him was attributable to or aggravated by his service conditions. Though payment of pension gives rise to a continuing cause of action, which arises each month, at the same time, what needs to be assessed in the present case will be whether the disability suffered by the petitioner can be said to be attributed to or caused by service. For answering this question, the medical record of the petitioner would have to be seen. In the present case as there is no medical opinion before this Court certifying that petitioner's disability was attributable to or aggravated by his service condition.

17. The position of law is well settled that Medical Boards are the expert bodies that provide a categorical opinion after evaluating the service record and other factors whether the disability is attributable to or aggravated by the service conditions to fall under the limits of Rule 3A(1)(a) of the CCS (EOP) Rules, 1939. The Courts can interfere with the findings of the Medical Board only on the ground of arbitrariness or being devoid of reasons or the same suffering from some



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procedural irregularity.

18. We are afraid, in the present case, on account of inordinate delay, the medical record of the petitioner has been weeded out, which would have been the basis for determining the causal effect between the Disability and the Service condition. Since the causal connection cannot be assessed, we find it difficult to grant any relief to the petitioner, as prayed for.

19. In the light of the above, the petition is dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

NOVEMBER 29, 2024/ss/F/as

Click here to check corrigendum, if any